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**OFFICE OF PETITIONS**

In re Application of :  
Benjamin Ross HERBERT :  
Application No. 10/533,742 : DECISION ON PETITION  
Filed: March 3, 2006 :  
Attorney Docket No. 60023150-0010 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 15, 2008, to revive the above-identified application.

The petition is **GRANTED**.


The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, July 10, 2007, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on October 11, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of \$1540; and (3) an adequate statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$2230 extension of time fee submitted with the petition on February 15, 2008 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account 19-3140.

Telephone inquiries concerning this decision should be directed to Diane Goodwyn at (571) 272-6735.

This application is being referred to Technology Center AU 1656 for appropriate action by the Examiner in the normal course of business on the reply received February 15, 2008.



Thurman Page  
Petitions Examiner  
Office of Petitions